

Office Supreme Court, U. S.

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WM. R. STANSBURY
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No. 263

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1925.

**UNION INSULATING & CONSTRUCTION
COMPANY,**

Appellant.

vs.

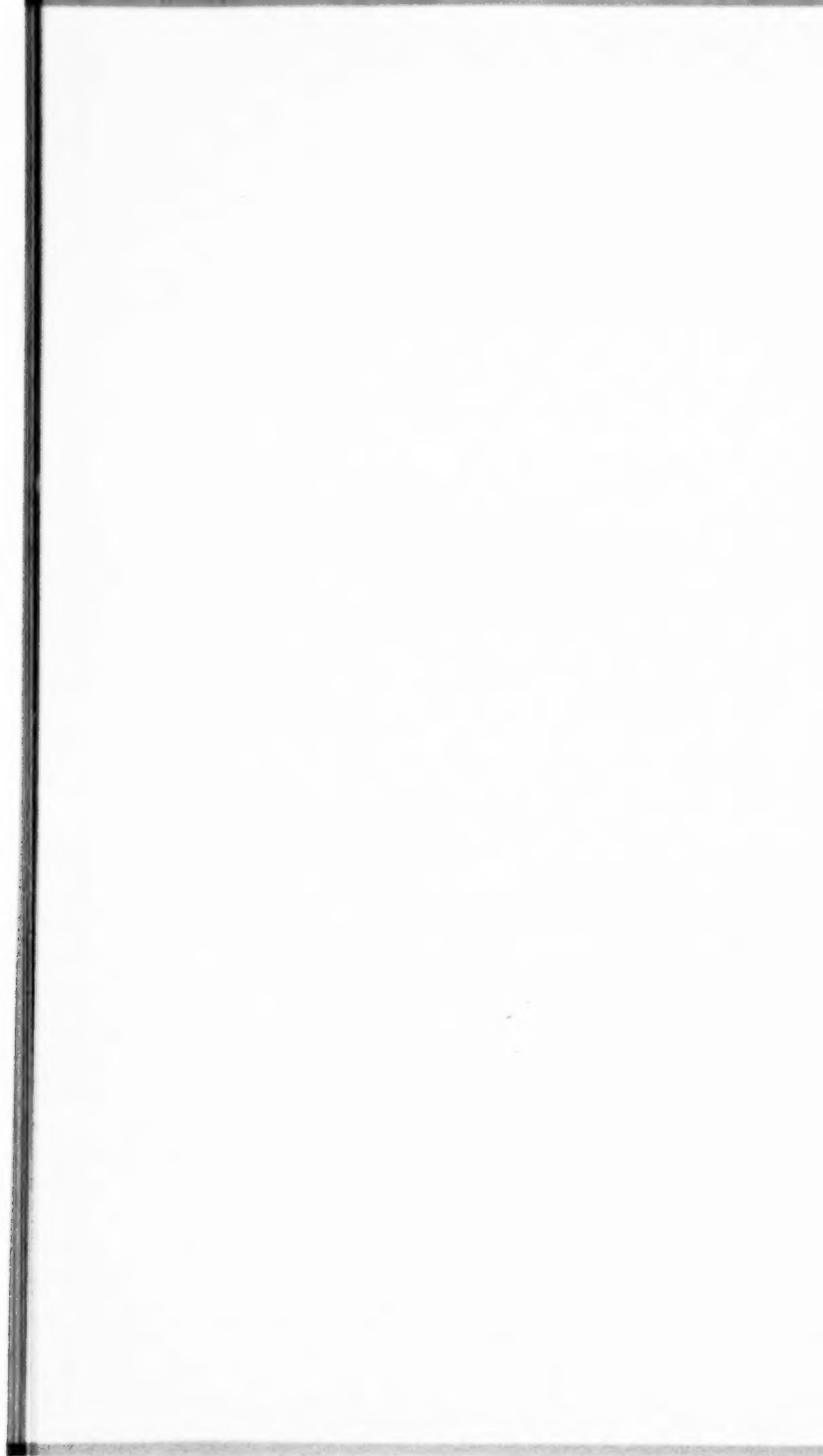
THE UNITED STATES,

Appellee.

} Appeal from the
Court of Claims.

REPLY BRIEF FOR APPELLANT.

EDMUND D. ADCOCK,
GEORGE I. HAIGHT,
Attorneys.



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The Court of Claims found that "the right of way furnished by the United States consisted of railroad tracks."

The contract provided and the Court of Claims found (R. 40) that the United States of America should furnish at all times *the necessary right of way* for ingress and egress to the place of storage of the construction materials and the place of ultimate use in construction. The Court of Claims also found that *the right of way furnished consisted of railroad tracks* running from the site of the work to the storage yards. (R. 40.) There is no evidence and no finding that any other means of ingress and egress was furnished, designated or available, either to the plaintiff or to other contractors. Indeed, the inference is that there was not, for the Court of Claims found that the tracks were used by others. (R. 40.) The absence of any showing or finding that other means of transportation were available to the contractor, precludes the defendant's argument that the contractor was not obligated

to use the railroad tracks. The record does not show that any alternative was open to the contractor in the matter of transportation of materials. Consequently, the contractor was obligated to use the railroad tracks and the Government was obligated, as the contract provides, to furnish certain rolling stock at the contractor's option. A mere right of passage is not a right of way for rolling stock. The question to be decided is whether the Government was bound to maintain the right of way which it provided, and this question cannot be avoided by the defendant's argument that the contractor was not obligated to use the railroad tracks.

In conclusion, it is respectfully submitted that the plaintiff and appellant should recover its damages occasioned by the failure of the defendant to maintain the right of way and its damages for the delay caused by the defendant.

Respectfully submitted,

Edmund D. Adeock
George J. Haight
Attorneys for Appellant.